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Provisional summary record of the 3431st meeting
Held at the Palais des Nations, Geneva, on Tuesday, 17 July 2018, at 10 a.m.

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Present:

Chair:	Mr. Valencia-Ospina
Members:	Mr. Aurescu
	Mr. Cissé
	Ms. Escobar Hernández
	Ms. Galvão Teles
	Mr. Gómez-Robledo
	Mr. Grossman Guiloff
	Mr. Hassouna
	Mr. Hmoud
	Mr. Huang
	Mr. Jalloh
	Mr. Laraba
	Ms. Lehto
	Mr. Murase
	Mr. Murphy
	Mr. Nguyen
	Mr. Nolte
	Ms. Oral
	Mr. Ouazzani Chahdi
	Mr. Park
	Mr. Peter
	Mr. Petrič
	Mr. Rajput
	Mr. Reinisch
	Mr. Ruda Santolaria
	Mr. Saboia
	Mr. Šturma
	Mr. Tladi
	Mr. Vázquez-Bermúdez
	Mr. Wako
	Sir Michael Wood
	Mr. Zagaynov

Secretariat:

Mr. Llewellyn	Secretary to the Commission

The meeting was called to order at 10.05 a.m.

Protection of the environment in relation to armed conflicts (agenda item 7) (*continued*) (A/CN.4/720)

Ms. Lehto (Special Rapporteur), summing up the debate on her first report, said that the applicability of the law of occupation to international organizations had been raised by many members of the Commission. A number had favoured addressing the issue in the draft principles or commentaries, although Mr. Murase and Sir Michael Wood had expressed doubts in that regard.

It had often been held that the law of occupation could be relevant to international territorial administration, particularly to missions of the United Nations, provided that such administration entailed the exercise of functions and powers over a territory comparable to those of an occupying State under the law of armed conflict, as in the case of the United Nations Interim Administration Mission in Kosovo. The possibility had been raised either as the *de jure* application of occupation law, whenever the criteria based on article 42 of the Regulations respecting the Laws and Customs of War on Land (the Hague Regulations) were met, or as application *de facto*. In practice, applicability *de jure* would be rare in the case of United Nations missions as it would require the mission in question to meet the criterion of non-consensual presence, while most such missions relied on the consent of the territorial State. Those who argued for *de facto* application referred to the many practical problems common to the various forms of foreign or international territorial administration. They pointed out that the law of occupation could usefully complement the mandate laid down in relevant United Nations Security Council resolutions, giving guidance and inspiration on how to deal with the various practical issues involved, which ranged from the taking and use of property to the treatment of detainees. Many prominent experts in international humanitarian law agreed with that view, stressing the importance and relevance of at least the substantive rules of occupation law to the administration of territory under the auspices of the United Nations. The question had also been addressed by the International Committee of the Red Cross in a report published in 2012 on occupation and other forms of administration of foreign territory.

There was nevertheless very little actual practice of any recourse to the law of occupation for such purposes. The only two cases of operations authorized by the United Nations in which the law of occupation had been applied *de facto* to the conduct of operations were the Unified Task Force in Somalia and the International Force in East Timor. In both cases, the Australian contingent had declared itself bound by the law of occupation, although operations had not been conducted under the command and control of the United Nations.

The United Nations had not yet embraced the idea and had never considered itself an occupying Power even *de facto*, nor were there currently any United Nations operations for which the law of occupation would be relevant. In that sense, the applicability of the law of occupation to other forms of territorial administration remained a somewhat theoretical possibility, which led her to think that the issue would not be mature enough to be addressed in the draft principles. If members nevertheless wished to do so, she would listen carefully to their arguments. It would be possible to replace the term "occupying State" in the draft principles with "occupying Power", which would be broader and could leave the door open to further developments. An explicit clarification to that effect could be included in the commentary, thereby also responding to Mr. Grossman Guiloff's concern about avoiding generalizations that excluded the applicability of the law of occupation to international organizations.

Mr. Murase had suggested that there might be a reason to formulate separate provisions for belligerent occupation and pacific occupation. While that distinction had played an important role historically, it had lost much of its significance. After the signing of the Charter of the United Nations, which enshrined the general prohibition on the use of force, the concept of pacific occupation could apply only to occupations based on an agreement or other consent of the territorial State. As Mr. Sturma had noted, the presence of foreign armed forces in such a case was governed by the terms of the agreement, not by

the law of occupation. She agreed that such situations were largely covered by draft principles 7 and 8.

The report focused on belligerent, or military, occupation, in which respect she agreed with the points made by Mr. Park, Mr. Nguyen, Sir Michael Wood and Ms. Escobar Hernández; however, she saw no reason to include the term "belligerent occupation" in the draft principles. While legally correct, it was interchangeable with the simpler term "occupation", which was widely used and rarely gave rise to misunderstandings. The Manual on the Law of Armed Conflict of the United Kingdom, for example, used the term "occupation" rather than "belligerent occupation", as did the Geneva Convention relative to the Protection of Civilian Persons in time of War (the Fourth Geneva Convention) and the Hague Regulations.

Mr. Park had suggested that the draft principles should differentiate more among situations of occupation in terms of nature and duration. "Protracted occupation" had been used in the report as a descriptive term, not as a distinct legal category. The law of armed conflict did not distinguish between different types of occupation. As Mr. Hmoud had said, the type and duration of occupation did not affect the applicability of international humanitarian law as *lex specialis*. At the same time, the obligations of the occupying State under the law of occupation were to a certain extent dependent on the prevailing situation. As had been highlighted by the International Committee of the Red Cross in its commentary to common article 2 of the Geneva Conventions of 1949, negative obligations — mostly prohibitions — under the law of occupation applied immediately, whereas the implementation of positive obligations depended on the level of control exerted, the constraints prevailing in the initial phases of the occupation, and the resources available to the foreign forces. The responsibilities falling on the occupying State were commensurate with the duration of the occupation. As a certain degree of flexibility in the implementation of the law of occupation was recognized, she saw no need to introduce any differentiation into the draft principles, although the commentaries would play an important role in that regard. She agreed with Mr. Nolte that it was sufficient for the commentaries to clarify that the exact scope of the respective obligation depended on the nature and duration of the occupation. A similar point had been made by Ms. Galvão Teles, Mr. Peter, Mr. Grossman Guiloff, Mr. Zagaynov and Ms. Escobar Hernández.

Most speakers had accepted the basic premise that the law of occupation had to be interpreted in the light of more recent rules of international law. As for environmental law conventions, Mr. Park had expressed doubt as to whether the Commission's 2011 articles on the effects of armed conflicts on treaties might apply to occupation; however, the commentary to article 2 (6) thereof defined armed conflict as including occupation of a territory, even when no armed resistance was met.

Concern had also been raised that insufficient attention was paid in that context to the specificities of the law of armed conflict. Sir Michael Wood had questioned whether it was realistic to expect peacetime obligations and standards relative to the environment to be applied in time of belligerent occupation; Mr. Murase had suggested that military necessity prevailed over environmental concerns and that it was permitted to employ any means of warfare available, unless specifically prohibited by the law of armed conflict. Mr. Murphy had queried the fact that the rules of international environmental law were being invoked without any acknowledgement in the draft principles themselves of the unique situation presented by military occupation.

Some of those concerns related directly to the draft principles and could best be addressed in that context, but some were of a general nature. The requirements of the law of occupation as *lex specialis*, as well as the realities of the situation, affected the extent to which other areas of international law, such as human rights law and international environmental law, might complement the law of armed conflict; however, that did not mea.. that humanitarian principles, human rights and environmental considerations could be ignored, even in the heat of armed hostilities, as had been made clear by the International Court of Justice in its advisory opinion on the *Legality of the Threat or Use of Nuclear Weapons*, and by the Commission in its work on the topic to date. As for the human rights obligations addressed in the report, it should be recalled that the International Covenant on Economic, Social and Cultural Rights did not provide for derogation. Furthermore, human

rights obligations, including those related to the environment, could not be so interpreted as to be deprived of all meaningful content. The question was not whether certain peacetime rules applied in situations of armed conflict or occupation but how they applied, in which respect she agreed that more research would be needed.

Concerning the legality of occupation, Mr. Peter, Mr. Petrič and Mr. Huang had questioned the applicability of the law of occupation to situations resulting from the unlawful use of force. The question of whether appropriate justification existed for the use of force was essential from the perspective of the Charter of the United Nations; nevertheless, the law of armed conflict applied whenever the criteria of armed conflict — international or non-international — were fulfilled, regardless of the reasons for the conflict. The Head of the Legal Division of the International Committee of the Red Cross had said that references to "unlawful occupation" could be misguiding, as they confused the issue of the lawfulness of the resort to the use of force with the issue of the rules of conduct to be applied once armed force had been used, thereby also obscuring the fundamental distinction between *jus ad bellum* and *jus in bello*, and that, from the perspective of international humanitarian law, occupation law applied equally to all occupations, whether or not they were the result of force used lawfully under jus ad bellum. It should be added that the various war crimes tribunals set up after the Second World War had relied on and interpreted the Hague Regulations and customary law; nevertheless, the issue could be addressed in the relevant commentary if thought helpful.

Several members had commented on the report's focus on the right to health, pointing out that there were other human rights relevant to environmental protection. While other rights were also discussed in the report, the right to health had been taken as an example to illustrate the links between human rights and environmental protection in greater detail. She would endeavour to ensure a better balance among relevant rights in the commentary. Ms. Escobar Hernández's specific proposal to address other rights in the context of the draft principles could be discussed by the Drafting Committee.

The Commission had asked for the relationship between the new draft principles, on occupation, and the draft principles already considered to be clarified. Different views had been expressed on how to achieve that goal. Mr. Nguyen had suggested placing them in part three (Principles applicable after an armed conflict); Mr. Murase favoured part two (Principles applicable during armed conflict). Mr. Park, supported by others, had proposed the inclusion of a separate draft principle to state that the draft principles in parts one, two and three applied *mutatis mutandis* to situations of occupation. Another possibility, as proposed in paragraphs 101 to 104 of the report, would be to include the necessary clarification in the commentary. That proposal had been explicitly supported by Ms. Galvão Teles and Mr. Hmoud, who had also wished to clarify that the relevance of certain post-conflict principles to occupation could not be interpreted as equating the two situations. Whether or not a separate provision along the lines proposed by Mr. Park were to be included, various aspects would need to be clarified in the commentary. She considered that it would be sufficient to address the issue in the commentary but was open to discussion. With regard to potential titles for the new draft principles and for part four of the set as a whole, she welcomed the various comments and suggestions made, particularly by Mr. Park.

The amended version of draft principle 19 (1) that she had proposed in her introductory statement had met with general support. In response to Sir Michael Wood's request for further explanation of what was meant by the words "a general obligation" and what basis there was to speak of such an obligation, she referred to paragraph 50 of the report. The point of departure was article 43 of the Hague Regulations; it was argued that the occupying State's obligation to restore and maintain public order and civil life must be interpreted in the light of current circumstances, including the importance of environmental concerns as an essential interest of all States, as stated by the International Court of Justice, and taking into account developments in international human rights law. As the Israeli Supreme Court had noted, the concept of civil life could not be interpreted to refer to civil life in the nineteenth century but must be given a contemporary content.

Mr. Jalloh and Mr. Nolte had sought clarification of the term "environmental considerations", in which respect it was important to note that environmental considerations were context-dependent and evolving, as pointed out in the commentary to draft principle

11, which employed the same notion. Paragraph (5) of that commentary stated: "Since knowledge of the environment and its ecosystems is constantly increasing, better understood and more widely accessible to humans, it means that environmental considerations cannot remain static over time, they should develop as human understanding of the environment develops." Further details could be included in the commentary to draft article 19.

The latter part of paragraph 1 of draft article 19 had attracted a number of comments. Mr. Murase, Mr. Murphy and Sir Michael Wood did not seem to agree with its content. Mr. Hmoud, Mr. Hassouna, Mr. Cissé, Mr. Nguyen and Ms. Escobar Hernández supported it, with Mr. Hassouna expressly referring to the *Manual of the Laws of Naval War*, published in Oxford in 1913, which was also referenced in the report, together with more recent sources. There had also been suggestions that the issue could be addressed in the relevant commentary. She would not insist on keeping it in the text of the draft principle, taking also into account the comments made by Ms. Galvão Teles, Mr. Rajput, Mr. Jalloh and Mr. Cissé on the notions of "territorial State" and "sovereign rights".

Mr. Rajput had made a slightly different point, drawing a connection between the applicability of the law of occupation to sea areas and the concept of effective control. Mr. Park had referred to the conclusion that the International Law Association had reached, based on the case concerning *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, to the effect that the obligations of occupying States would vary according to the degree of control they exercised, and had made a specific proposal in that regard. She agreed that effective control was a key concept in the law of occupation, but as that requirement was part of the definition of occupation, it might be sufficient to clarify it in the commentary.

As for paragraph 2 of draft principle 19, the words "unless absolutely prevented", which were taken from article 43 of the Hague Regulations, had been seen as too categorical by Mr. Murphy, who had proposed to introduce the conditions contained in article 64 of the Fourth Geneva Convention. Ms. Oral had made a similar point. Mr. Šturma had pointed out that forward-looking changes to the legislation of the occupied State should not be arbitrary and must take into account the interests of the occupied population. Mr. Rajput, Mr. Huang and Mr. Valencia-Ospina had expressed a preference for the existing version. The final wording could be discussed in the Drafting Committee and further clarification provided in the commentary.

A further proposal concerning paragraph 2 of draft principle 19 had been made by Mr. Hassouna, supported by Mr. Nolte, Ms. Oral, Ms. Escobar Hernández and Mr. Vázquez-Bermúdez, who had pointed out that, in addition to local legislation, the paragraph should make reference to the international obligations of the occupied State. Such an addition could be useful. One example was given in paragraph 87 of the report, concerning the situation in which the occupying State, on a temporary basis, became subject to rights and obligations regarding a watercourse, lake, maritime area or other transboundary water resource that the territorial sovereign shared with other States. She welcomed the suggestion made by a number of members to add a third paragraph to draft principle 19, dealing with the human rights obligations of the occupying State; specific wording could be discussed in the Drafting Committee.

With regard to draft principle 20, several issues had been raised. The first concerned the limits to the occupying Power's right to administer and use the resources of the occupied territory. Ms. Galvão Teles had proposed adding wording along the lines of that used in the 2003 Bruges Declaration on the Use of Force of the Institute of International Law, receiving general and specific support from several members. It was clear that exploitation was not an end in itself, as pointed out by Mr. Cissé. The wording used by the Institute could prove useful in that regard, either in the draft principle or in the commentary; the principle of permanent sovereignty to natural resources, which had been supported by most, should also be taken into account.

The second issue related to the mention of "minimizing environmental harm", which Sir Michael Wood viewed as overlapping with the content of draft principle 19. The issue would need to be considered by the Drafting Committee. According to Mr. Murphy, the

term "minimization" was at odds with the exploitation rights of the occupying State under the Hague Regulations and the Fourth Geneva Convention; however, she recalled that the purpose of the draft principles, as enshrined in draft principle 2, was to enhance "the protection of the environment in relation to armed conflict, including through preventive measures for minimizing damage to the environment during armed conflict". Ms. Oral had proposed altering the word "minimizes" to "prevents". Mr. Murphy had suggested that the phrase calling for the occupying State to ensure "sustainable use" of natural resources might be read as precluding the use of non-renewable natural resources, but her research indicated that his concerns were groundless, as neither practice nor the literature revealed a categorical distinction being drawn between renewable and non-renewable resources in the context of sustainable use. Moreover, sustainable use could not be equated with precluding exploitation; if necessary, that could be clarified in the commentary.

A further issue related to the very concept of sustainable use of natural resources, or the more overarching concept of sustainable development from which it flowed. Several members had questioned the legal nature of the concept, and a proposal had been made to change the word "shall" in draft principle 20 to "should". It was important to recall, in that regard, that the point of departure for draft principle 20 was article 55 of the Hague Regulations, which was binding as a matter of customary law. Even without referring to the concept of sustainable use, the rights of usufruct, 111 years after the adoption of the Hague Regulations, would need to be interpreted to involve environmental care. It should be recalled that usufruct referred to what was necessary or usual in the exploitation of the relevant resource. In the modern world, "necessary and usual" could not ignore the environment. Given the established status of the concept of sustainability, which combined exploitation interests with environmental and social concerns, particularly in the context of sustainable use of natural resources, there was little reason to replace it with another environmental term.

Ms. Oral had asserted that the adoption by consensus of the 2030 Agenda for Sustainable Development and the Sustainable Development Goals rendered the debate about whether sustainable development was a legal principle or a policy to a certain extent moot, as the principle had been accepted by States at the highest level, and that it would be incongruous for the Commission to appear to be challenging the global consensus. Sir Michael Wood had suggested that draft principle 20 did not add much to draft principle 19 and could be deleted. However, exploitation of natural resources was a major environmental question in its own right. For example, unsustainable use of water resources by an occupying Power in an area that suffered from persistent water scarcity could lead to drought and many other environmental problems. According to the United Nations Environment Programme, fresh water was the most crucial aspect of environmental management in the Occupied Palestinian Territory.

Draft principle 21 had met with broad agreement, but the wording had attracted some comment. The two main alternative sources for wording were the advisory opinion on the *Legality of the Threat or Use of Nuclear Weapons* and the Commission's 2001 articles on prevention of transboundary harm from hazardous activities. The current text, which was derived from the judgment of the International Court of Justice in the case concerning *Pulp Mills on the River Uruguay* (*Argentina v. Uruguay*), had also been supported as the most recent authoritative formulation of the obligation.

Several members had welcomed the bibliography provided in the report. She encouraged proposals for additional materials in languages other than English.

The programme for future work that she had suggested had been generally supported. Mr. Hassouna and Mr. Petrič had observed that non-international armed conflicts, as well as questions of responsibility and liability, were vast and complex areas of law. Her intention was not to give a comprehensive presentation of those two areas but to address certain questions relevant to the present topic. It could be useful to examine practice and consider what possibilities there were to enhance the protection of the environment in non-international armed conflicts.

Mr. Park and Mr. Jalloh had raised a more substantial question concerning how the classification of armed conflicts was reflected in the topic, seeking clarification as to

whether she intended to change the Commission's practice. They had pointed out that the Commission had not distinguished between international and non-international armed conflict in the draft principles it had previously adopted. That held true for the set of draft principles as a whole, and she agreed with Mr. Jalloh that it would not be advisable to expressly limit the draft principles to one type of armed conflict, given that the development of customary law had tended to progressively reduce the importance of the distinction between international and non-international armed conflicts and could be expected to further develop in that direction. So far, the Commission had nevertheless used different terminology in different draft principles, referring to "States parties", "parties" or "States", depending on whether the relevant measures were intended to be taken by parties to an international armed conflict, parties to a non-international armed conflict, including non-State armed groups, or by any States in a position to do so. Furthermore, where a draft principle drew on existing rules of international law, the commentaries regularly commented on the applicability of such rules in international and non-international armed conflict. It was not her intention to depart from that practice in examining certain issues of environmental harm that were prevalent in contemporary non-international armed conflicts, much less to create new distinctions. As Mr. Cissé had pointed out, her second report would complement the first one, which focused entirely on one aspect of international armed conflicts: occupation.

The Chair said he took it that the Commission wished to refer draft principles 19 to 21 to the Drafting Committee, taking into account the comments and observations made in the plenary.

It was so decided.

Organization of the work of the session (agenda item 1) (*continued*)

Mr. Jalloh (Chair of the Drafting Committee) said that the Drafting Committee on the topic of protection of the environment in relation to armed conflicts was composed of Mr. Aurescu, Mr. Cissé, Ms. Escobar Hernández, Mr. Gómez-Robledo, Mr. Grossman Guiloff, Mr. Hmoud, Mr. Huang, Mr. Murase, Mr. Murphy, Mr. Nguyen, Ms. Oral, Mr. Park, Mr. Peter, Mr. Rajput, Mr. Ruda Santolaria, Mr. Saboia and Sir Michael Wood, together with Ms. Lehto (Special Rapporteur) and Ms. Galvão Teles (Rapporteur), ex officio.

Succession of States in respect of State responsibility (agenda item 10) (A/CN.4/719)

The Chair invited the Special Rapporteur to introduce his second report on the topic of succession of States in respect of State responsibility.

Mr. Šturma (Special Rapporteur) said that, owing to time constraints associated with the translation of his second report, he had not included all the elements and draft articles that had originally been planned. He welcomed the comments received from Commission members and from delegations attending the meetings of the Sixth Committee. Although he did not necessarily agree with all of them, they offered a valuable source of inspiration for future work. The Commission's reports and draft articles were, after all, always the outcomes of collective work. With that approach in mind, he wished to draw attention to certain adjustments that might address the concerns and questions raised in previous debates on the topic and preserve its central thrust, as outlined in the first report.

He agreed that it would be sensible to postpone an in-depth discussion of draft articles 3 and 4, which had already been referred to the Drafting Committee. They could easily be held in the Drafting Committee until the other draft articles, notably those on general rules on succession of States in respect of State responsibility, had been provisionally adopted. The Drafting Committee and the Commission would then be in a better position to decide on the final wording and placement of draft articles 3 and 4, which concerned the role of agreements and unilateral declarations, respectively.

Although it had not been his original intention, he accepted the view expressed by some in the Commission that the issue of the legality of succession should also be addressed.

The fact that examples of State succession were rare should not prevent the Commission from formulating certain general and specific rules on succession, or non-succession, in respect of State responsibility. However, he admitted that State practice in that area was diverse, context-specific and sensitive. He would not suggest replacing a highly general theory of non-succession with a similarly general theory of succession. Instead, a more flexible and realistic approach was called for.

While he had advocated, and the Commission had endorsed, a basic level of terminological consistency with the Commission's previous works, the general approach taken did not necessarily have to follow the structure of the 1978 Vienna Convention on Succession of States in respect of Treaties, the 1983 Vienna Convention on Succession of States in respect of State Property, Archives and Debts and other texts on succession of States in respect of areas other than State responsibility. It was important to take into account the differences between the rules on succession of States in respect of State responsibility and those on succession of States in respect of other areas.

The general approach taken towards the topic was informed by an understanding of State responsibility as a complex legal regime under customary international law, one that had in large part been codified by the Commission in its articles on responsibility of States for internationally wrongful acts. Although they were not binding, the Commission's articles on State responsibility undoubtedly constituted one of the most important achievements in the codification of customary international law. They were widely considered to reflect customary international law. It was therefore necessary to take their content into account and to determine whether, and if so to what extent, that content might also apply in situations of succession of States. That approach called for a combination of deductive and inductive methods. The general principles and rules of the articles on State responsibility should be applied or, if necessary, developed to serve as guidance for States facing problems of responsibility in cases of succession.

It seemed necessary to recall the concept of State responsibility. Although there was no need to provide a formal definition of the concept in draft article 2 (Use of terms), it should be explained in the report and eventually in the commentary. According to paragraph (5) of the Commission's commentary to article 1 of the articles on State responsibility, the term "international responsibility" covered the relations which arose under international law from the internationally wrongful act of a State, whether such relations were limited to the wrongdoing State and one injured State or whether they extended also to other States or indeed to other subjects of international law. It was possible to define the concept of State responsibility under contemporary international law as a bundle of principles and rules of secondary character governing in particular the establishment of an internationally wrongful act and its attribution to a given State, the content and forms of responsibility, and the invocation of the responsibility of a State. Although it was not possible to formulate a general rule or rules on succession, or non-succession, for responsibility *in abstracto*, such a rule or rules could be formulated for its principal constituent parts, such as the attribution, content and invocation of the responsibility of a State, whether predecessor or successor.

The determination of the general rules of succession, or non-succession, did not exhaust the topic. Such general rules were subject to exceptions and modifications in response to various factors, such as whether a breach was completed or continuing and whether the State in question continued to exist. The latter aspect seemed to be of particular importance. That was why the continued existence of the predecessor State and the cessation of its existence had been dealt with together in a dedicated section of the report and draft articles.

In addition to addressing certain general rules, the second report also addressed the issue of the transfer of obligations arising from an internationally wrongful act of the predecessor State. In other words, succession of States in respect of responsibility would mean the devolution of the obligation of reparation from the predecessor State to the successor State.

The report included seven new draft articles. As he had already indicated, he had in mind two or three further draft articles that would concern the content of responsibility.

They would address the possible impact of succession of States on various obligations arising from State responsibility, namely restitution, compensation and assurances of non-repetition. Those issues would be addressed in the third report.

Draft article 5 related to general rules and therefore needed to be dealt with at an early stage in the Commission's work on the topic. After some hesitation, he had eventually decided to include a chapter on the issue of legality of succession. He had done so partly for the sake of consistency with the 1978 and 1983 Vienna conventions, the 1999 articles on nationality of natural persons in relation to the succession of States and the 2015 resolution of the Institute of International Law on succession of States in matters of international responsibility, all of which addressed the issue of legality.

He admitted that the legality of succession was a controversial issue. The Commission had discussed it in the 1970s. As the Special Rapporteur for the topic of succession of States in respect of treaties, Sir Francis Vallat, had rightly noted in paragraph 174 of his first report (A/CN.4/278 and Add.1-6), the concept of "succession of States" was defined in paragraph (3) of the commentary to draft article 2 as "the fact of the replacement of one State by another" without any indication as to whether it had occurred in a lawful or unlawful manner. Succession conceived as a "fact" might be in conformity with international law, as in the case of cession on the basis of a treaty, but it might also occur in violation of international law, as in the case of the annexation of the territory or part of the territory of a State. There were also cases in which it was not clear whether the fact giving rise to succession was lawful, unlawful or simply not governed by international law. He wished to point out that the cases presented in the report served only as examples. He made no claims regarding their completeness and did not pass judgment on any of them other than those in which illegality had clearly been established. In view of those considerations, he had ultimately decided to include draft article 5, which was modelled on article 6 of the 1978 Vienna Convention. It should be noted that succession in respect of State responsibility entailed not only the transfer of obligations but also the transfer of rights.

Draft article 6 also related to general rules. It reflected the approach explained in the introduction of his second report. The general rule that it advanced was based on the principle of non-succession with regard to the establishment of an internationally wrongful act. In other words, under draft article 6 (1), the fact of succession had no impact on the attribution of responsibility for an internationally wrongful act committed before the date of succession. That was because the conduct attributed to the predecessor State had been and remained the wrongful act of that State. The implication was that, if the predecessor State continued to exist, the injured State or subject could, even after the date of succession, invoke the responsibility of the predecessor State and claim reparation from it for the damage caused by the internationally wrongful act.

Chapter III of the second report included an analysis of the distinction between an instantaneous breach and a breach having a continuing character and of the issue of composite acts and their possible impact on the succession of States in respect of State responsibility. On that basis, draft article 6 (3) provided that the general rule was without prejudice to the possible attribution of the internationally wrongful act to the successor State on the basis of the breach of an international obligation by an act having a continuing character if it was bound by the obligation. However, that general rule did not preclude the possibility of exceptions. On the contrary, draft article 6 (4) made it clear that, notwithstanding the provisions of draft article 6 (1) and (2), the injured State or subject could claim reparation for the damage caused by an internationally wrongful act of the predecessor State also or solely from the successor State or States.

That provision served as a bridge to draft articles 7 to 11, which developed and modified the general rule. In other words, their purpose was to identify the circumstances in which the obligations arising from an internationally wrongful act rested with the predecessor State and those in which they passed to the successor State. That process required a focus on specific categories of succession.

Chapter IV dealt with cases of succession in which the predecessor State continued to exist. Although it was divided into four sections, only three draft articles were proposed in it. The reason was that section B contained an analysis of the issue of responsibility for

the conduct of insurrectional or other movements on the basis of article 10 (2) of the articles on State responsibility. That analysis was important, as it showed that, in its previous work, the Commission had already envisaged one situation in which a State was responsible for acts that had taken place before its creation. However, that case was different from succession of States *stricto sensu*, in that it was not the act of the predecessor State but that of a non-State actor, insurrection or other movement that succeeded in establishing a new State in part of the territory of a pre-existing State. Therefore, the rule was reflected not in a dedicated draft article, but in draft articles 7 and 8, as an exception. Those draft articles dealt with the separation of parts of a State (secession) and the establishment of newly independent States, respectively.

Draft articles 7 and 8 were broadly similar. They both represented departures from the general rule that the obligations arising from an internationally wrongful act of the predecessor State did not pass to the successor State. In addition to providing for an exception to that general rule for the conduct of an insurrectional or liberation movement, draft articles 7 and 8 also provided for exceptions in particular circumstances, including the existence of a direct link between the act or its consequences and the territory of the successor State or States. In the case of secession, it might also be the case that the act had been carried out by an organ of a territorial unit of the predecessor that had later become an organ of the successor State.

Those two circumstances could also constitute exceptions to the general rule of non-succession in draft article 9, which concerned the transfer of part of the territory of a State. As cession was typically executed on a consensual basis, the possibility that responsibility for the conduct of an insurrectional or other movement might devolve upon the successor State had not been included in that category of succession.

Chapter V addressed cases of succession in which the predecessor State did not exist. Draft article 10 (Uniting of States) covered two situations, namely the merger of two or more States and the incorporation of one State into a second, pre-existing State. For the purpose of the proposed draft articles, there was no substantial difference between the two scenarios, as the obligations arising from an internationally wrongful act passed to the successor State in both cases. However, the States concerned, including an injured State, might agree otherwise.

Draft article 11 concerned the dissolution of a State. Dissolution was possibly the most complex category of succession, as it resulted in at least two successor States to which, to a greater or lesser extent, responsibility for an internationally wrongful act of the predecessor State and its consequences could be attributed. Relevant factors in that regard included territorial links, relations with the population of such States and any economic or other advantages arising from the wrongful act. Therefore, emphasis was placed in that draft article on the role of agreements that should be negotiated by successor States in good faith.

Going forward, he intended to follow the programme of work outlined in his first report, while allowing for some degree of flexibility. A number of adjustments had been indicated in part one of the second report. In addition, the newly identified issue of forms and invocation of reparation required further analysis, which might eventually give rise to additional draft articles. Time constraints had prevented him from addressing that issue in the second report. The Commission might also wish to include some other definitions in draft article 2.

The third report, which would be submitted in 2019, should thus focus on the transfer of the rights or claims of an injured predecessor State to its successor State. The fourth report, which would be submitted in 2020, could address procedural and miscellaneous issues, including cases in which there was a plurality of successor States and therefore a question of shared responsibility, and the possibility of applying rules on succession of States in respect of State responsibility to injured international organizations or to injured individuals. Depending on the progress of the debate and the Commission's overall workload, it should be possible to adopt the entire set of draft articles on first reading in 2020 or 2021.

Mr. Park said he was glad that the Special Rapporteur had responded to the point raised by many members at the previous session, himself included, by discussing different categories of State succession in the second report. Although many members had expressed concern that there were insufficient examples of State practice related to the topic and that intricate questions were involved, he agreed with the Special Rapporteur's observation in paragraph 13 of the report that there was a need for international law to serve as a framework able to ensure legal security and stability in international relations. In his view, the Commission's work on the topic would fill a gap between the regimes of State succession and State responsibility and help bring clarity and predictability to the issue.

Concerning the Special Rapporteur's general approach to the topic, he agreed with the decision to address the issue of legality of succession at an early stage as a general provision of the draft articles. He supported the Special Rapporteur's suggestion that the Commission's discussion should not aim to replace the general theory of non-succession with a similarly general theory in favour of succession, but to provide "a confirmation of non-succession in certain legal relations arising from State responsibility and a formulation of special rules (or possible exceptions) on succession in others". He himself had advocated such an approach at the previous session. However, some parts of the report appeared to depart from the intention of finding exceptions to the general theory of non-succession and to come closer to replacing the general rule of non-succession. For instance, in dealing with cases of succession where the predecessor State did not exist, the Special Rapporteur contended, in paragraph 148, that "the general rule of non-succession should be replaced rather by a presumption of succession in respect of obligations arising from State responsibility". Regardless of the existence of a predecessor State, in his view the starting point or presumption should be the non-succession rule, and the conditions or exceptions would differ depending on the categories of succession and the interested parties. The clarification and identification of exceptional cases in the context of the general theory of non-succession would be the most important aspect of the topic, and it was important to maintain logical consistency in expressing general rules and exceptions.

With regard to terminology, he was in favour of using the terminology of previous works of the Commission, without necessarily following the structure of the 1978 and 1983 Vienna conventions on State succession. He also agreed that the concept of State responsibility should be explained in the commentary.

The report dealt with the transfer of obligations arising from the internationally wrongful act of the predecessor State according to categories of State succession. He agreed with the methodology of grouping cases of succession into two types — where the predecessor State continued and where it no longer existed — as that would avoid unnecessary repetition of rules and exceptions for every case of succession. Noting that the report dealt only with the transfer of obligations arising from the internationally wrongful act of the predecessor State, and that the Special Rapporteur had indicated that he would discuss the transfer of the rights or claims of an injured predecessor State to the successor State in his third report, he wondered whether the intention was to add the rights and claims to the draft articles on the transfer of obligations proposed in the current report or to suggest a separate set of draft articles for such rights or claims. The latter approach would lead to inevitable duplication. He noted that the Institute of International Law dealt with rights and obligations together in the same article in its resolution on succession of States in matters of international responsibility.

It would be necessary to give some consideration to the subsidiary nature of the set of draft articles proposed in the second report. The Special Rapporteur had noted in paragraph 86 of the first report that the rules to be codified should be of a subsidiary nature; that general rule should also be articulated as a provision of the draft articles. In its resolution on the topic, the Institute of International Law had recognized the subsidiary character of its guiding principles, stating that they applied in the absence of any different solution agreed upon by the parties concerned by a situation of succession of States, including the State or other subject injured by the internationally wrongful act.

Turning to the proposed draft article 5, he noted that the requirement for succession to be in conformity with international law was based on the 1978 and 1983 Vienna conventions and on practices reflecting the principle that no territorial acquisition resulting

from the threat or use of force should be recognized as legal, as set out in the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations. That was consistent with the fundamental principle of *ex injuria jus non oritur*, under which an entity created in violation of international law was not recognized. The legality of succession was also presented as a requirement in article 2 (2) of the resolution of the Institute of International Law. He agreed with the Special Rapporteur's point in paragraph 40 about the rationale for the inclusion of a draft article modelled on article 6 of the 1978 Vienna Convention to clarify the scope of application.

Regarding draft article 6 (1), he agreed with the approach taken by the Special Rapporteur whereby general principles commonly applicable to every situation were discussed before moving on to specific situations. As the Special Rapporteur noted in paragraph 43, it was important to verify to what extent general principles and rules of State responsibility could be applied to situations of internationally wrongful acts where succession of States had occurred. However, he had doubts about the use of the term "attribution" in that context. "Attribution" was used in the context of State responsibility to refer to the "subjective element" of State responsibility, namely the requirement to establish State responsibility. In his understanding, the topic dealt with the transfer of rights or obligations arising from State responsibility after such responsibility had been conclusively established, except in the case of a continuing wrongful act. From the perspective of succession, it was not clear from the current wording — "succession of States has no impact on the attribution of the internationally wrongful act" — whether it referred to a subjective element of State responsibility. He noted that the Institute of International Law had used the adjective "attributable" in its draft article 4 (1) on succession of States in matters of international responsibility: "The internationally wrongful act committed before the date of succession of States by a predecessor State is attributable to this State". He therefore proposed using the word "attributable" if necessary.

Regarding draft article 7, in his view an appropriate title would simply be "Separation of parts of a State", without the addition of the controversial concept of "secession" in brackets after it. That term was employed more specifically to describe instances where the territory was removed without the consent of the predecessor State, while the term "separation" was used to refer to instances where such removal was accepted by the predecessor State. Such consent could be given in the Constitution of the parent State or in some other form, either prior to the declaration of independence or following an initial unilateral declaration. The lack of consent of the predecessor State was the key element that characterized secession *stricto sensu* and explained why it was so controversial in international law.

As for draft article 8, he agreed generally with the Special Rapporteur's reasoning and the proposed draft article. As the 1978 and 1983 Vienna conventions treated the situation of newly independent States differently from other categories of succession, he believed that a separate category was still necessary and was relevant.

He agreed with proposed draft article 9, except for some minor points. For instance, in paragraph 2, he suggested replacing "the obligations ... will transfer to the successor State" with "the obligations ... will pass to the successor State", and "a territorial unit of the predecessor" with "a territorial unit of the predecessor State". In paragraph 3, it was specified that responsibilities were assumed by the predecessor State and the successor State but, depending on the context, it might only be the successor State. That question could perhaps be dealt with in the Drafting Committee.

Given the current situation on the Korean Peninsula, he wished to pay particular attention to draft articles 10 and 11, in which the Special Rapporteur considered situations where the predecessor State no longer existed. In such situations, the Special Rapporteur applied the general rule of succession, contending that if no one were to take responsibility, that would not be consistent with the objectives of international law, including equitable and reasonable settlement of disputes. However, as much as an injured State's rights and claims were important, in his view the consent of the successor State was imperative in assuming obligations arising from an internationally wrongful act committed by the

predecessor State. That view, however, would be more appropriate in a discussion of *lex ferenda*; there was a lack of State practice supporting succession theory.

In draft article 10, the Special Rapporteur dealt with the situation of unification under the title of "uniting of States", the term used in the 1978 and 1983 Vienna conventions. However, the Commission's own articles on nationality of natural persons in relation to the succession of States referred to "unification of States". He personally would prefer to use "unification", as it reflected the terminology used in the most recent work of the Commission. With regard to the specific issue of unification in relation to the need for the successor State's consent, he noted that in draft article 10, which provided for the transfer of obligations to the successor State in cases of both merger and incorporation, paragraph 3 required the consent of the States concerned, including an injured State. To his mind, the basic logic of draft article 10 would be applicable to all situations if the subsidiary nature of the draft article to the general rule was confirmed. In the specific situation of unification, however, he was not sure whether the State practice on which the draft article was based was sufficient to be articulated as a "succession rule" deviating from the general principle of non-succession.

In his analysis, the Special Rapporteur largely relied on the situation of Germany. However, as he noted in paragraph 159, controversy remained as to whether article 24 (1) of the Treaty on the Establishment of German Unity could be interpreted as acceptance by the Federal Republic of Germany of obligations arising from internationally wrongful acts committed by the German Democratic Republic. The case cited in paragraph 160 constituted an exception to the traditional approach of non-succession. In that case, the Federal Administrative Court had *a priori* rejected the idea that the Federal Republic of Germany had responsibility for obligations arising from internationally wrongful acts committed by the German Democratic Republic, but found that it had the obligation to pay compensation because the expropriated property was part of unified Germany. The case had been resolved because the predecessor State's property law had been incorporated into the law of the unified Germany, highlighting the fact that such matters could be resolved by incorporating the law of the predecessor State into the law of the successor State. Nonetheless, it could not be interpreted as the automatic transfer of an obligation to the successor State.

As suggested in paragraph 161, if there was an agreement between the successor State and a third State, obligations arising from internationally wrongful acts committed by a predecessor State that had ceased to exist could continue. However, in the example given in that paragraph the successor State had agreed to take over the obligations arising from the internationally wrongful acts committed by the predecessor State against a third State; again, that could not be regarded as the automatic succession of responsibility. The key factor was the successor State's willingness to resolve the issue by bearing secondary obligations. He would therefore propose revising draft article 10 (3) by adding the words "subject to the consent of the successor State", "subject to an agreement" or some other appropriate phrase to illustrate the need for the successor State's consent. Moreover, in the situation of unification, as in the situation of dissolution articulated in draft article 11, equitable proportion and other relevant factors must be considered. Notwithstanding his criticism, he believed that paragraph 3 of draft article 10 was necessary. While the default principle would be succession subject to the consent of the successor State, certain agreements entered into by the parties concerned, including an injured State, could supersede that principle.

Regarding draft article 11, he had some comments on the Special Rapporteur's approach. In paragraph 189, the Special Rapporteur noted that a transfer of obligations could take place "according to or in the absence of an agreement". He agreed with the more cautious approach taken in draft article 11 (1), which stated that "the obligations arising from the commission of an internationally wrongful act of the predecessor State pass, subject to an agreement, to one, several or all the successor States". Indeed, he did not see the two International Court of Justice cases cited — *Gabčíkovo-Nagymaros Project (Hungary/Slovakia)* and *Application of the Convention on the Prevention and Punishment of the Crime of Genocide* — as supporting the argument that a transfer of obligations could take place according to or in the absence of an agreement, but rather as emphasizing the

need for the consent of the interested parties. He recalled that, at the previous session, he had provided his own interpretation of the *Gabčíkovo-Nagymaros Project* case, namely that the Court had not clearly recognized the obligations of Slovakia resulting from the transfer of secondary obligations arising from the responsibility of Czechoslovakia, but instead had noted the effect of the special agreement concluded between the parties in respect of rights and obligations relating to the *Gabčíkovo-Nagymaros Project* case.

In paragraph 179, the Special Rapporteur noted in respect of the case concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide that the judgment seemed to be the most recent pronouncement in favour of the argument that the responsibility of a State might be engaged by way of succession. However, it was his understanding that the Court had not clarified the issue of the transfer of obligations arising from State responsibility. Even though the Court had not accepted the argument of Serbia rejecting the existence of general international law on succession of State responsibility, it had not needed to decide on the question. Thus, he agreed that it should be specified in draft article 11 (1) that secondary obligations were transferred "subject to an agreement".

Concerning future work, the Special Rapporteur had indicated that he would discuss in the third report the transfer of rights or claims of an injured predecessor State to the successor State. In his view, if it wished to work efficiently, the Commission would need to consider carefully whether rights and obligations should be dealt with in separate sets of articles or not.

Sir Michael Wood said that, for the most part, the second report was very readable. It was clear and concise, yet gave the reader sufficient information to assess the proposed draft articles, even though the topic was complex and there was often little practice or case law to draw on. It was particularly helpful that each proposed article was set out immediately after the section which formed its basis. He was glad that the Special Rapporteur had taken account of the Commission's debate on the first report and the debate in the Sixth Committee. At the Commission's sixty-ninth session, he himself had pointed out that the first report did not provide an in-depth or systematic account of the materials, and had asked about the Special Rapporteur's plans for making such materials available – whether, for example, he intended to propose that the Commission should request States to provide an account of their practice and case law on the matter, and whether it would be useful for the Commission to request a study from the Secretariat. As the Commission was still at an early stage in its work, such initiatives might be useful, so he once again put those questions to the Special Rapporteur.

The report relied rather heavily on writers and, like the Institute of International Law, on policy considerations. Given that strong policy component of the approach to the topic, which was probably inevitable, the Commission needed to be particularly mindful of the views of States. It already had the benefit of what they had said in the Sixth Committee in 2017, which was described in the second report. In addition, during the first part of its current session, the Commission had held a side-event at which State representatives had explained the impact of the topic in relation to several situations of State responsibility. That, in his view, had reinforced the need for a close dialogue with States in relation to the topic.

Some of the cases to which the Special Rapporteur referred were controversial and would therefore have to be handled carefully, if it proved necessary to mention them at all in the commentaries.

He generally agreed with the overall approach to the topic outlined in chapter I, section B, apart from the stark separation of succession to obligations and succession to rights proposed in paragraph 21, which might require further consideration at the third report. In chapter II, he supported draft article 5, which was based on article 6 of the 1978 Vienna Convention and on a careful, convincing analysis of the Commission's relevant prior work.

Chapter III, concerning general rules of succession of States in respect of State responsibility, went to the heart of the topic. To some extent, he shared Mr. Park's view that the Special Rapporteur made such extensive exceptions to the general rule of non-

succession that he came close to replacing it. He might be in broad agreement with the substance of draft article 6, but both the text and the explanation of the reasoning behind it were hard to follow. He read the proposed text as meaning that the predecessor State still bore responsibility for its internationally wrongful act, whereas the successor State was not responsible for the predecessor State's internationally wrongful act, except as provided for in later articles. The purpose of the draft article was apparently to set out a general rule of non-succession, but it did so without significant reliance on State practice or *opinio juris* and more by implication from the rules set forth in part one of the articles on responsibility of States for internationally wrongful acts, including those on attribution of conduct to a State. While that approach might be justified, the focus on attribution made draft article 6 rather obscure; what mattered was not so much the original attribution of conduct to the predecessor State, but whether the latter remained responsible after a succession of States. He took it that the phrase "the following draft articles" in paragraph 4 of draft article 6 referred to draft articles 7 to 11. The sentence quoted in paragraph 42, which was drawn from the commentary to draft article 31 of the draft articles on succession of States in respect of State property, archives and debts, was of no obvious relevance, since it concerned State debts and not State responsibility for internationally wrongful acts.

Although the Special Rapporteur might be right that, from a policy viewpoint, the situation where a predecessor State existed and one in which it did not were quite different, it would be necessary to ascertain whether practice supported that position. In draft articles 7 to 11, the Special Rapporteur had been wise to retain the categories of succession adopted in the 1970s, which, although somewhat dated, were well understood by States and international lawyers. New terms should not be introduced unnecessarily. He therefore concurred with Mr. Park that there was no need for the term "secession", since the notion of "separation of part or parts of a State" already existed in the 1978 Vienna Convention.

In view of the lack of State practice regarding succession to State responsibility, it was unsurprising that, in respect of draft articles 7 to 10, the Special Rapporteur had relied on the writings of Patrick Dumberry when considering whether there might be exceptions to the general rule of non-succession to international responsibility.

As far as draft article 7 was concerned, the three circumstances invoked as justification for an exception to the aforementioned general rule might represent good policy choices, but scholarly writings and an overtly policy-based resolution of the Institute of International Law were hardly an adequate basis for proposals to States, other than as *lex desiderata*. Moreover, paragraph (3) of the commentary to article 11 of the articles on State responsibility stated that "in the context of State succession, it is unclear whether a new State succeeds to any State responsibility of the predecessor State with respect to its territory". The reasoning behind the four paragraphs of draft article 7 was hard to perceive. The meaning of the phrase "if particular circumstances so require" at the beginning of paragraphs 2 and 3 would have to be spelled out in the draft article or explained very carefully in the commentary. Similarly, it was unclear what the term "direct link" signified in that context. Paragraph 4, which was drawn from draft article 10 (2) of the articles on State responsibility, was concerned with the attribution of conduct, not State responsibility as such and still less with State succession to State responsibility. It might therefore require redrafting.

In draft article 8, it would be advisable, for the sake of clarity, to define "newly independent State", but there was no need to delve into the question of protectorates. The first sentence of paragraph 2 seemed to be redundant and the meaning of the second sentence called for some explanation. He also wished to know why draft article 8 (3) and draft article 7 (4) were worded differently. Draft article 9 seemed unexceptional. In draft article 10 the rule of succession proposed by the Special Rapporteur was presumably suggested as *lex ferenda*, as it rested on very little practice.

Draft article 11 was perhaps the most difficult of the texts proposed in the second report and would require very careful consideration at all stages. The views of States would be of very great importance for the Commission's future work in that respect. To say that obligations passed, subject to an agreement, to one, several or all successor States was vague and of no great comfort to an injured State. The same was true of the requirement that a successor State should negotiate in good faith. Perhaps the Commission should be

less cautious and follow the lead of the Institute of International Law in its resolution on succession of States in matters of international responsibility.

He was content with the future workplan and would be happy to refer draft articles 5 to 11 to the Drafting Committee.

Mr. Nguyen welcomed the fact that the Special Rapporteur had filled in the lacunae with regard to examples of State practice from regions other than Europe in respect of a topic which essentially combined two sensitive aspects of international law, namely responsibility of States for internationally wrongful acts and succession of States. He endorsed the Special Rapporteur 's approach, which rested primarily on the principle of non-succession while at the same time allowing for some flexibility.

As far as the legality of succession was concerned, it would be advisable to model draft article 5 on the common provisions of article 6 of the 1978 Vienna Convention and article 3 of the 1983 Vienna Convention, as they made it possible to treat succession in a variety of circumstances in a flexible manner. Moreover, they were consistent with the articles on nationality of natural persons in relation to the succession of States. The succession of States was directly linked with changes in territory and population. It affected the vital interests of predecessor, successor or third States and other subjects of international law. State practice showed that dissimilar circumstances led to different kinds of succession. Succession could be a legal tool for realizing the right to self-determination, or it could damage the integrity of a State. It would be helpful if the Special Rapporteur could offer some insight into the consequences for State responsibility of the recognition or non-recognition of a successor State. For example, the non-recognition of a successor State could prolong the negotiation of appropriate compensation for the expropriation of foreign property provided for in article 2 (2) (c) of the Charter of Economic Rights and Duties of States.

Since, traditionally, the State guilty of a wrongful act bore responsibility for it, a wrongful act committed by a predecessor State before the date of succession should logically be attributed to that State alone. However, draft article 6 (1) did not indicate which subject of international law would bear responsibility for an internationally wrongful act committed before the date of succession of States, unlike article 4 of the 2015 resolution of the Institute of International Law, which stipulated that international responsibility arising from an internationally wrongful act committed before the date of succession of States by a predecessor State fell on that State. That contention was appropriate when the predecessor State continued to exist, but it could not apply to a situation where the predecessor State was defunct, or where the successor State assumed the rights and obligations of the predecessor State by virtue of a unilateral declaration. He therefore proposed that the general rule of non-succession should be expressed in language along the following lines: "The internationally wrongful act committed before the date of succession by a predecessor State is not attributable to the successor State unless the latter otherwise agrees." That wording would take account of Mr. Park's wish to replace "attribution" with "attributable" and would be consistent with draft articles 7, 8 and 9. He also agreed with Sir Michael Wood that it was necessary to be mindful of the views of States with regard to succession.

He wished to add some information about the unification of Viet Nam in order to clarify the information in the report, as some writers regarded that unification as the merging of two States to form a new one, whereas others were of the opinion that it was the reunification of two parts of the same country. Both the Agreement on the Cessation of Hostilities in Viet-Nam, signed in Geneva on 20 July 1954, and the Agreement on Ending the War and Restoring Peace in Viet-Nam, signed in Paris in 1973, had sought to preserve the national integrity of Viet Nam. Viet Nam had had two Governments after 30 April 1975; the Provisional Revolutionary Government of South Viet-Nam and the Government of the Democratic Republic of Viet-Nam. The political consultative conference held in Ho Chi Minh City in November 1975 had decided to hold a nationwide general election. It was untrue to suggest, as the report did in paragraph 154, that two national assemblies had merged. The newly elected National Assembly then decided to call a united Viet Nam the Socialist Republic of Viet Nam.

The resolution of issues regarding the expropriation of property in South Viet Nam and the freezing of assets held in banks in the United States of America had been delayed by the refusal of the Government of the United States of America to recognize the Socialist Republic of Viet Nam as the successor to assets of the former Government of South Viet Nam. In fact, those issues had not been resolved until 1995, when the Agreement between the Government of t. United States of America and the Government of the Socialist Republic of Viet Nam concerning the Settlement of Certain Property Claims had been signed. However, that "lump-sum agreement" did not say that the expropriation of property previously owned by the United States of America or its nationals or the expropriation of assets owned by Viet Nam or its nationals were wrongful acts. For that reason, the assertion in paragraph 155 of the report that Viet Nam had accepted "full responsibility for wrongful acts committed by its predecessor State" was incorrect. Moreover, the expropriation of foreign properties by a newly independent State did not always constitute a wrongful act because article 2 (2) (c) of the Charter of Economic Rights and Duties of States permitted such expropriation subject to the payment of appropriate compensation. The special case of a newly independent State called for specific treatment since it transcended the scope of the 2015 resolution of the Institute of International Law, article 2 (3) of which stated that: "The present Articles do not govern the situations resulting from political changes within a State, including changes in the regime or name of the State."

The draft articles should be referred to the Drafting Committee for reconsideration.

The meeting rose at 12.55 p.m.